

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDWIN L. JENKINS and NATIONAL SECURITY ADMINISTRATION,
Fort Meade, MD

*Docket No. 99-2413; Submitted on the Record;
Issued January 5, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has met his burden of proof to modify an October 18, 1995 wage-earning capacity determination.

The case has been before the Board on a prior appeal. By decision dated May 6, 1998, the Board affirmed the October 18, 1995 decision of the Office of Workers' Compensation Programs, finding that appellant had a 32 percent loss of wage-earning capacity.¹ The history of the case is contained in the Board's prior decision and is incorporated herein by reference.

In a letter dated April 22, 1999, appellant requested reconsideration, asserting that the wage-earning capacity determination was erroneous because he did not meet the general educational development (GED) requirements of the selected position of estimator. Appellant submitted an April 16, 1999 letter from Jim Ewing, a specialist in vocational rehabilitation services. He stated that, based on his review of the evidence, appellant did not meet the levels of development and aptitude criteria for the position of estimator.

In a decision dated May 13, 1999, the Office denied the request for reconsideration on the grounds that it was untimely and failed to show clear evidence of error. By decision dated July 15, 1999, the Office vacated the May 13, 1999 decision, finding that the reconsideration request was timely. In a decision dated July 16, 1999, the Office determined that the evidence was not sufficient to warrant modification of the wage-earning capacity determination.

The Board has reviewed the record and finds that appellant did not meet his burden of proof to modify the wage-earning capacity determination.

¹ Docket No. 96-469 (issued on May 16, 1998). The Board dismissed appellant's first appeal in Docket No. 95-1044 by order dated May 19, 1995 for lack of jurisdiction.

Once the wage-earning capacity of an injured employee is determined, a modification of such determination is not warranted unless there is a material change in the nature and extent of the injury-related condition, the employee has been retrained or otherwise vocationally rehabilitated, or the original determination was, in fact, erroneous.² The burden of proof is on the party attempting to show a modification of the wage-earning capacity determination.³

With respect to the above standard, appellant argues that the original determination was erroneous.

In support of his contention that the original determination was erroneous, appellant has submitted a letter from a vocational rehabilitation specialist, stating that appellant did not have sufficient aptitude in reasoning, mathematics and language to meet the requirements of the position of estimator (No. 169.267.038 in the *Dictionary of Occupational Titles* (4th ed. rev. 1991).

The description of the selected position of estimator states that the recommended GED level for reasoning, mathematics and language is level four. Appendix C of the *Dictionary of Occupational Titles* describes the abilities in reasoning, mathematics and language that are associated with each level.⁴ Mr. Ewing does not discuss specifically the skills associated with level four abilities,⁵ but notes that appellant had a 5th grade equivalent in arithmetic, 4th grade in reading and 3rd grade in spelling. The *Dictionary of Occupational Titles* states that, although ordinarily the education described in the GED levels is obtained in school, “it may be obtained from experience and self study.”⁶ In this case it is evident that it was appellant’s work experience that provided the basis for a determination that he had the vocational ability to perform the duties of estimator.

In a November 26, 1991 report, an Office rehabilitation counselor stated that the position of estimator “requires strong reasoning, math and language skills.” However, counselor noted that appellant worked as a building estimator from 1977 to 1982 and that his work history included other skilled positions. The counselor’s conclusion that appellant could perform the job of building estimator” was based on a complete understanding of the position requirements and appellant’s vocational skills. The Office specialist felt that appellant’s work history, which included actual employment as an estimator, provided the necessary vocational skills for the position. The April 16, 1999 letter from Mr. Ewing does not discuss appellant’s work history, or attempt to explain why the selected position was not appropriate, in view of appellant’s work experience.

² Sue A. Sedgwick, 45 ECAB 211 (1993).

³ *Id.*

⁴ Department of Labor, *Dictionary of Occupational Titles*, Appendix C: Components of the Definition Trailer.

⁵ He states that this is equivalent to Grades 9 to 12, although Appendix C does not associate GED levels with specific grade equivalents.

⁶ *Id.*, 1010.

Accordingly, the Board finds that appellant had the vocational ability to perform the duties of the selected position. In the absence of probative evidence, establishing error in the October 18, 1995 wage-earning capacity determination, the Board finds that appellant has not met his burden of proof to modify the determination.

The decision of the Office of Workers' Compensation Programs dated July 16, 1999 is hereby affirmed.

Dated, Washington, DC
January 5, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member